

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHARIFF ABBAS,

Plaintiff,

-v-

10-CV-0141-WMS
ORDER

UNITED STATES OF AMERICA,

Defendant.

Pro se Plaintiff, Shariff Abbas, initially commenced this action pursuant to, *inter alia*, the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671 *et seq.*, and *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 398 (1971), alleging violations of his rights while detained at the Buffalo Federal Detention Facility in Batavia, New York and other detention facilities and jails. (Docket No. 1.) Following the dismissal of the Amended Complaint (Docket Nos. 17, 19) and Judgment being entered in favor of Defendants (Docket No. 20), Plaintiff appealed and the United States Court of Appeals for the Second Circuit vacated the Orders of this Court that had dismissed Plaintiff's *Bivens* and FTCA claims and remanded this action with the direction to dismiss the FTCA claim without prejudice to allow Plaintiff to make any equitable tolling arguments he chose to make. (Docket No. 27, Mandate; *Shariff v. United States*, 689 F. App'x 18 (2d Cir. 2017)).

Plaintiff filed a Second Amended Complaint and, upon screening of that pleading pursuant to 28 U.S.C. § 1915(e)(2)(B), this Court: (1) dismissed the *Bivens* claims without prejudice to refile a Third Amended Complaint that sets forth facts that the *Bivens* claims were timely filed, or that Plaintiff was entitled to equitable tolling of the statute of

limitations; (2) severed and dismissed without prejudice to refiling in the appropriate United States District Court, the claims related to Plaintiff's immigration status and supervision following his release from detention in 2007 and through the present; and (3) directed the United States, upon filing of the Third Amended Complaint and further direction from the Court, to file an answer or other response to the FTCA claim. (Docket No. 35.)

Rather than file a Third Amended Complaint, Plaintiff filed a Notice of Appeal from the Court's Order (Docket No. 36) and the Second Circuit dismissed the Notice of Appeal because it was not an appeal from a final order and denied Plaintiff's Motion for the Appointment of Counsel as moot. (Docket No. 40, Mandate.)

Because Plaintiff filed a Notice of Appeal from the Court's Order granting him leave to file a Third Amended Complaint with respect to the *Bivens* claims asserted in the Second Amended Complaint, he did not file a Third Amended Complaint. The Court, therefore, will provide Plaintiff with one final opportunity to file a Third Amended Complaint, if he wishes, according to the directions set forth in the Order screening the Second Amended Complaint (Docket No. 35). Accordingly,

IT IS HEREBY ORDERED that Plaintiff, if he wishes, shall file a Third Amended Complaint as directed in the Court's Order entered February 28, 2018 (Docket No. 35), no later than **December 12, 2018**. If Plaintiff does not file a Third Amended Complaint by that date, the *Bivens* claims alleged in the Second Amended Complaint related to the conditions of his confinement at the Buffalo Federal Detention Facility between April 8, 2005 and January 6, 2006, and February 24 through August 5, 2006 will be dismissed

with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B), and the United States shall file an answer or other response to the Second Amended Complaint and the FTCA claims only no later than **February 13, 2019**; and

FURTHER, that the Clerk of Court is directed to resend to Plaintiff with this Order a copy of the Second Amended Complaint, a blank § 1983 complaint form, which Plaintiff may use for his Third Amended Complaint if he chooses, the instructions for filing an amended complaint, this Order and the Order entered February 28, 2018 (Docket No. 35).

SO ORDERED.

/s/William M. Skretny
William M. Skretny
United States District Judge

DATED: November 12, 2018
Buffalo, NY